

ASSEMBLY BILL

No. 603

Introduced by Assembly Member Price

February 25, 2009

An act to amend Section 2924 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 603, as introduced, Price. Mortgages and deeds of trust: foreclosure.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.

This bill would make a nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924 of the Civil Code is amended to
2 read:
3 2924. (a) Every transfer of an interest in property, other than
4 in trust, made only as a security for the performance of another
5 act, is to be deemed a mortgage, except when in the case of
6 personal property it is accompanied by actual change of possession,
7 in which case it is to be deemed a pledge. Where, by a mortgage
8 created after July 27, 1917, of any estate in real property, other
9 than an estate at will or for years, less than two, or in any transfer

1 in trust made after July 27, 1917, of a like estate to secure the
2 performance of an obligation, a power of sale is conferred upon
3 the mortgagee, trustee, or any other person, to be exercised after
4 a breach of the obligation for which that mortgage or transfer is a
5 security, the power shall not be exercised except ~~where~~ *if* the
6 mortgage or transfer is made pursuant to an order, judgment, or
7 decree of a court of record, or to secure the payment of bonds or
8 other evidences of indebtedness authorized or permitted to be
9 issued by the Commissioner of Corporations, or is made by a public
10 utility subject to the provisions of the Public Utilities Act, until
11 all of the following apply:

12 (1) The trustee, mortgagee, or beneficiary, or any of their
13 authorized agents shall first file for record, in the office of the
14 recorder of each county wherein the mortgaged or trust property
15 or some part or parcel thereof is situated, a notice of default. That
16 notice of default shall include all of the following:

17 (A) A statement identifying the mortgage or deed of trust by
18 stating the name or names of the trustor or trustors and giving the
19 book and page, or instrument number, if applicable, where the
20 mortgage or deed of trust is recorded or a description of the
21 mortgaged or trust property.

22 (B) A statement that a breach of the obligation for which the
23 mortgage or transfer in trust is security has occurred.

24 (C) A statement setting forth the nature of each breach actually
25 known to the beneficiary and of his or her election to sell or cause
26 to be sold the property to satisfy that obligation and any other
27 obligation secured by the deed of trust or mortgage that is in
28 default.

29 (D) If the default is curable pursuant to Section 2924c, the
30 statement specified in paragraph (1) of subdivision (b) of Section
31 2924c.

32 (2) Not less than three months shall elapse from the filing of
33 the notice of default.

34 (3) After the lapse of the three months described in paragraph
35 (2), the mortgagee, trustee or other person authorized to take the
36 sale shall give notice of sale, stating the time and place thereof, in
37 the manner and for a time not less than that set forth in Section
38 2924f.

39 (b) In performing acts required by this article, the trustee shall
40 incur no liability for any good faith error resulting from reliance

1 on information provided in good faith by the beneficiary regarding
2 the nature and the amount of the default under the secured
3 obligation, deed of trust, or mortgage. In performing the acts
4 required by this article, a trustee shall not be subject to Title 1.6c
5 (commencing with Section 1788) of Part 4.

6 (c) A recital in the deed executed pursuant to the power of sale
7 of compliance with all requirements of law regarding the mailing
8 of copies of notices or the publication of a copy of the notice of
9 default or the personal delivery of the copy of the notice of default
10 or the posting of copies of the notice of sale or the publication of
11 a copy thereof shall constitute prima facie evidence of compliance
12 with these requirements and conclusive evidence thereof in favor
13 of bona fide purchasers and encumbrancers for value and without
14 notice.

15 (d) All of the following shall constitute privileged
16 communications pursuant to Section 47:

17 (1) The mailing, publication, and delivery of notices as required
18 by this section.

19 (2) Performance of the procedures set forth in this article.

20 (3) Performance of the functions and procedures set forth in
21 this article if those functions and procedures are necessary to carry
22 out the duties described in Sections 729.040, 729.050, and 729.080
23 of the Code of Civil Procedure.

24 (e) There is a rebuttable presumption that the beneficiary
25 actually knew of all unpaid loan payments on the obligation owed
26 to the beneficiary and secured by the deed of trust or mortgage
27 subject to the notice of default. However, the failure to include an
28 actually known default shall not invalidate the notice of sale and
29 the beneficiary shall not be precluded from asserting a claim to
30 this omitted default or defaults in a separate notice of default.